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8
 9 **UNITED STATES BANKRUPTCY COURT**
 DISTRICT OF NEVADA

10 In re:
 11 MUSCLEPHARM CORPORATION,
 12 Debtor.

Case No. 22-14422-NMC
 Chapter 11

14 **STIPULATION GRANTING THE OFFICIAL COMMITTEE OF UNSECURED**
 15 **CREDITORS STANDING TO PURSUE CERTAIN ESTATE CAUSES OF ACTION**

16 MusclePharm Corporation (“Debtor”) and the Official Committee of Unsecured Creditors
 17 (the “Committee” and together with the Debtor, the “Parties”) hereby stipulate and agree
 18 (“Stipulation”) as follows:

19 **RECITALS**

20 A. On December 15, 2022 (the “Petition Date”), the Debtor filed a voluntary petition
 21 for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the
 22 United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”).

23 B. On January 4, 2023, the United States Trustee appointed the following as members
 24 of the Committee: (i) Atlantic Grain & Trade, (ii) JW Nutritional, LLC, and (iii) MHF Opco, LLC
 25 (f/k/a Mill Haven Foods, LLC). On February 21, 2023, the United States Trustee appointed the
 26 following as additional members of the Committee: (i) Excelsior Nutrition, Inc. and (ii) S.K.
 27 Laboratories, Inc.

28 C. Since its appointment, the Committee has investigated potential claims and causes

1 of action against the Debtor's current and former directors and officers, including Ryan Drexler.
 2 The Committee has concluded that colorable estate claims for, among other things, breach of
 3 fiduciary duty, exist against certain of the Debtor's current and former directors and officers,
 4 including Ryan Drexler. Moreover, the Committee believes that such claims represent a valuable
 5 source of recovery for general unsecured creditors. In order to preserve such claims and the
 6 applicable insurance policies covering such claims, the Committee sent a "Notice of
 7 Circumstances Letter" to the Debtor on June 16, 2023 (the "Notice of Circumstances Letter").

8 D. On June 19, 2023, the Debtor and Committee filed that certain *First Amended Plan*
 9 *of Reorganization for MusclePharm Corporation Under Chapter 11 of the Bankruptcy Code Dated*
 10 *June 19, 2023* [Docket No. 604] (the "Plan").

11 E. Pursuant to the Plan, all of the estate's claims and causes of action with respect to
 12 the Debtor's current and former directors and officers, other than the White Winston D&O Claims
 13 (as they are defined in the Plan), will vest in the Litigation Trust (as defined in the Plan) for the
 14 benefit of general unsecured creditors.

15 F. On June 27, 2023, the Securities and Exchange Commission charged Ryan Drexler
 16 with violating and/or aiding and abetting violations of the antifraud provisions and other provisions
 17 of the federal securities laws. Many of the allegations overlap with the claims identified by the
 18 Committee in the Notice of Circumstances Letter. The case is captioned *Securities and Exchange*
 19 *Commission vs. Ryan C. Drexler*, Case No. 2:23-cv-05102 (C.D. Cal. June 27, 2023). A true and
 20 correct copy of the complaint is attached hereto as Exhibit A.

21 G. The Debtor and Committee have engaged in discussions related to the Committee's
 22 investigation and pursuit of claims and causes of action against the Debtor's current and former
 23 directors and officers, including the claims described in the Notice of Circumstances Letter. As a
 24 result of those discussions, the Debtor and Committee have determined it is in the best interests of
 25 the estate and its creditors for the Committee to be granted leave, standing, and authority to
 26 investigate, assert, prosecute, and/or settle the estate's claims and causes of action against the
 27 Debtor's current and former directors and officers and any applicable insurance policies (the
 28 "D&O Claims").

STIPULATION

NOW THEREFORE, subject to approval of the Bankruptcy Court, it is hereby stipulated and agreed as follows:

1. The Committee is granted exclusive standing to prosecute, mediate, and/or settle any and all claims, causes of action, objections, and other rights on behalf of the Debtor's estate with respect to the D&O Claims, including appointment consistent with the provisions of section 1123(b)(3)(B) of the Bankruptcy Code.

2. The standing conferred herein is to the fullest extent permitted under the Bankruptcy Code, including sections 105 and 1103(c) thereof.

3. In consultation with the Debtor and with respect to the D&O Claims only, the Committee is hereby (i) granted, and shall have the non-exclusive right to control, any and all privileges, including the attorney-client privilege and work product protection, and (ii) granted the non-exclusive right to control any confidential information and/or documents, in both instances on behalf of the Debtor's estate with respect to all claims, causes of action, objections, and other rights for which the Committee has been granted leave, standing, and authority to assert, prosecute, and/or settle on behalf of the Debtor's estate pursuant to this Stipulation and the order approving this Stipulation. The grant of standing and access to privileged communications, information, and documents shall not constitute a waiver by the Debtor's estate of any such privilege or protection regardless of disclosure to the Committee professionals or members in accordance with this Stipulation. In the event of a dispute between the Committee and the Debtor with respect to the application of the attorney-client privilege or work product protection, the Debtor (solely through its independent director, Nicholas Rubin, or a successor chapter 7 trustee or liquidation trustee) shall retain control over the privilege and the determination of whether to disclose any privileged information or attorney work product.

4. Nothing in this Stipulation or the order approving this Stipulation shall be deemed to waive, limit, impair, or otherwise prejudice the Committee's right to seek further leave, standing, and authority to assert, prosecute, and/or settle on behalf of the Debtor's estate any additional claims, causes of action, objections, and other rights of the Debtor's estate against any

1 persons or entities. No claim, cause of action, or defense is released, impaired, or waived by this
2 Stipulation or the order approving this Stipulation. Nothing in this Stipulation or the order
3 approving it shall be deemed to grant the Committee standing to pursue any other claims or causes
4 of action other than D&O Claims.

5 5. The Debtor and the Committee are pursuing a joint litigation strategy giving rise to
6 a common interest privilege that shall apply to communications between Debtor and the
7 Committee under applicable attorney-client, work-product, or any other applicable privilege. In
8 the event of a dispute between the parties regarding the use, scope, or application of a privilege,
9 the Parties shall petition the Court to resolve such dispute.

10 6. Notwithstanding sections 1102(b)(3) and 1103(c) of the Bankruptcy Code, the
11 Committee shall not disseminate to any third party, including to any creditor or creditor's
12 representative: (1) without further order of the Court, any confidential information; or (2) any other
13 information or documents if the effect of such disclosure would constitute a general or subject
14 matter waiver of the attorney-client, work-product, or other applicable privilege.

15 7. This Stipulation is subject to the approval of the Bankruptcy Court, and the Parties
16 agree to present the Stipulation to the Bankruptcy Court for approval.

17 8. The Parties agree that the Debtor is authorized and empowered to take any and all
18 actions necessary to implement the terms of the order approving this Stipulation.

19 9. The Parties agree that the Bankruptcy Court shall retain jurisdiction with respect to
20 all matters arising under or related to the interpretation or implementation of this Stipulation.

21 10. This Stipulation shall be effective immediately upon entry of an order approving
22 this Stipulation.

23 ...

24 ...

25 ...

26

27

28

1 STIPULATED:

2 /s/ Samuel A. Schwartz

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EXHIBIT A

SEC vs. Drexler Complaint

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Case No. 2:23-cv-05102

Plaintiff,

COMPLAINT AND JURY DEMAND

VS.

RYAN C. DREXLER

Defendant.

Plaintiff, United States Securities and Exchange Commission (the “SEC”), for its Complaint against Ryan C. Drexler (“Drexler” or “Defendant”), alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to Sections 20(b),

1 20(d), 20(e), and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C.
 2 §§ 77t(b), 77t(d), 77t(e), and 77v(a)] and Sections 21(d), 21(e), and 27(a) of the
 3 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e) and
 4 78aa(a)].

5 2. Drexler, directly or indirectly, made use of the means or
 6 instrumentalities of interstate commerce, or of the mails, or of the facilities of a
 7 national securities exchange in connection with the acts, practices, transactions, and
 8 courses of business set forth in this Complaint.

9 3. Venue lies in this Court pursuant to Section 22(a) of the Securities Act
 10 [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa]. For the
 11 majority of the time period relevant to this Complaint, Drexler resided in Beverly
 12 Hills, California, and worked in the headquarters of MusclePharm, Corp.
 13 (“MusclePharm”), in Burbank, California, and certain of the acts, practices,
 14 transactions, and courses of business alleged in the Complaint occurred within this
 15 District.

16 4. Drexler entered into a tolling agreement to toll the running of any statute
 17 of limitations against him from July 8, 2022, through January 4, 2023. Drexler
 18 entered into a second tolling agreement to toll the running of any statute of limitations
 19 against him from January 5, 2023 through July 4, 2023.

20 SUMMARY

21 5. Drexler, during his tenure as Chairman, President, and Chief Executive
 22 Officer (“CEO”) of MusclePharm, a publicly-traded nutritional supplement company,
 23 engaged in a scheme to defraud MusclePharm’s investors about the strength of the
 24 company’s controls over financial reporting and disclosures and the devastating
 25 impact of MusclePharm’s debt default in the third quarter of 2022. His conduct also
 26 ran afoul of critical rules regarding the processes, controls, and procedures that public
 27 companies, like MusclePharm, must have in place to provide assurance that their
 28 accounting and public reports are accurate.

1 6. Drexler's fraudulent and deceptive conduct manifested itself in two
 2 specific ways. First, Drexler failed to ensure that, and made false statements about
 3 whether, MusclePharm had basic processes, controls, and procedures in place to
 4 ensure that its accounting for revenue, profit, and other important financial metrics –
 5 all of which was reported to and relied on by investors – was correct.

6 7. Drexler was responsible for maintaining appropriate internal control
 7 over financial reporting ("ICFR") and disclosure controls and procedures ("DCP") at
 8 MusclePharm. Under SEC rules, public companies, such as MusclePharm, are
 9 required to maintain ICFR and DCP, which include processes designed to provide
 10 reasonable assurance that their financial reporting complies with generally accepted
 11 accounting principles ("GAAP") and controls designed to ensure that information is
 12 disclosed pursuant to SEC requirements. Drexler failed to ensure that MusclePharm
 13 maintained appropriate ICFR and DCP and made false and misleading statements
 14 about both.

15 8. In every annual and quarterly report that Drexler signed and certified on
 16 behalf of MusclePharm between at least year-end 2017 and the third quarter of 2018,
 17 Drexler certified that he had evaluated MusclePharm's ICFR and DCP. In fact, he
 18 had not performed any evaluation.

19 9. Drexler's failure to ensure that MusclePharm maintained ICFR and DCP
 20 contributed to MusclePharm reporting inaccurate financial statements for at least the
 21 year-end 2017 through the third quarter of 2018.

22 10. Second, in the third quarter of 2022, Drexler engaged in deceptive
 23 conduct and made misleading statements by hiding from investors that a \$10 million
 24 debt to MusclePharm creditors had been automatically accelerated and was presently
 25 due, resulting in immediate and catastrophic consequences for the company and its
 26 investors.

27 11. In addition to his fraudulent and deceptive conduct, Drexler also violated
 28 critical provisions of the securities laws by directing MusclePharm not to report

exceptional turnover in a key financial position, and engaging in conduct that led to MusclePharm underreporting certain perquisite compensation that executives at the company received.

4 12. Finally, Drexler did not reimburse MusclePharm for cash bonuses that
5 he received after filing financial statements that were later restated due to
6 misconduct, as required by the Sarbanes-Oxley Act of 2002 (“SOX”).

7 13. By engaging in this conduct, Drexler is liable, and unless enjoined, is
8 likely to continue to: violate or aid and abet violations of Section 17(a) of the
9 Securities Act [15 U.S.C. §§ 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §
10 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; violate Section 14(a) of
11 the Exchange Act [15 U.S.C. § 78n(a)] and Rules 13a-14, 13a-15(b), 13a-15(c), 14a-
12 3, and 14a-9 thereunder [17 C.F.R. §§ 240.13a-14, 240.13a-15(b), 240.13a-15(c),
13 240.14a-3, and 240.14a-9]; and aid and abet violations of Sections 13(a) and
14 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(B)] and Rules
15 12b-20, 13a-1, 13a-11, 13a-13, and 13a-15(a) thereunder [17 C.F.R. §§ 240.12b-20,
16 240.13a-1, 240.13a-11, 240.13a-13, and 13a-15(a)]. Drexler also violated and, unless
17 ordered to comply, is likely to continue to violate, Section 304(a) of SOX [15 U.S.C.
18 § 7243(a)].

DEFENDANT

20 14. **Ryan C. Drexler**, 52, currently resides in Las Vegas, Nevada. Until
21 approximately April 2021, Drexler resided in Beverly Hills, California. Drexler was
22 the Chairman of MusclePharm’s board of directors from approximately June 2015 to
23 December 2022. He also served as MusclePharm’s CEO from approximately March
24 2016 to December 2022 and as MusclePharm’s principal accounting officer (“PAO”)
25 and principal financial officer (“PFO”) from approximately September 2017 to April
26 2020. Drexler is also MusclePharm’s largest lender and shareholder. From 2015
27 through 2022, Drexler executed multiple notes to loan MusclePharm more than \$28
28 million; certain of those notes were converted to common stock; and he still holds

1 secured notes totaling approximately \$10 million.

2 **OTHER RELEVANT ENTITY**

3 15. **MusclePharm Corp.**, is a Nevada corporation that develops, markets,
4 and distributes branded nutritional supplements. Its current principal place of
5 business is in Las Vegas, Nevada, but it was headquartered in Burbank, California
6 from approximately December 2017 until August 2021. MusclePharm's securities are
7 registered pursuant to Section 12(g) of the Exchange Act and traded on the OTC
8 Link, operated by OTC Markets Group Inc., under the symbol "MSLP" or "MSLPQ."
9 In 2015, MusclePharm settled claims brought by the SEC for violations of Sections
10 5(a), 5(c), 17(a)(2), and 17(a)(3) of the Securities Act; Sections 13(a), 13(b)(2)(A),
11 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13,
12 and 14a-9 thereunder; and Rule 302 of Regulation S-T of the Exchange Act (the
13 "2015 SEC Order"). MusclePharm filed for Chapter 11 bankruptcy protection in the
14 U.S. Bankruptcy Court for the District of Nevada on December 15, 2022.

15 **FACTS**

16 **I. BACKGROUND AND FINANCIAL RESTATEMENT.**

17 16. In August 2015, MusclePharm announced a restructuring plan focused
18 on reducing costs and reallocating the company's resources for profitable growth. In
19 its Form 10-K filed on April 2, 2018, MusclePharm announced that this restructuring
20 plan was substantially complete.

21 17. During the earnings call for the fourth quarter of 2017, Drexler
22 highlighted the completion of the restructuring program and proclaimed that the
23 company was now on a path to consistent profitable growth.

24 18. In order to achieve consistent growth, Drexler pushed MusclePharm's
25 sales team to meet unrealistic quarterly sales targets, and threatened to, and did, fire
26 employees who challenged him or failed to achieve the targets.

27 19. In this environment, MusclePharm reported quarter over quarter revenue
28 growth from the fourth quarter of 2017 through the third quarter of 2018. Drexler

1 highlighted this achievement in each of the Company's press releases and earnings
2 calls during that period.

3 20. MusclePharm reported its financial results for these periods in its Form
4 10-K for 2017 and Forms 10-Q for the first three quarters of 2018, which Drexler
5 signed and certified as MusclePharm's CEO, President, Chairman of the Board of
6 Directors, Principal Executive Officer ("PEO"), PFO, and PAO.

7 21. During its 2018 audit work, the company's external auditor detected that
8 MusclePharm had recognized revenue at the end of the fourth quarter of 2018 that it
9 should have recorded in later periods because certain inventory had been temporarily
10 stored off-site in trailers rather than being shipped to MusclePharm's customers prior
11 to year-end.

12 22. The company opened an internal investigation to identify the scope and
13 cause of the errors. The internal investigation uncovered similar errors with
14 unshipped orders impacting the third quarter of 2018, and the company filed a Form
15 8-K on March 14, 2019, announcing that its previously reported financial statements
16 for the three and nine months ended September 30, 2018, should no longer be relied
17 upon. In April 2019, the company announced on Form NT 10-K that it would be
18 unable to timely file its 2018 annual report, and in May 2019, the company's external
19 auditor resigned without completing the 2018 audit work.

20 23. More than a year later, on August 25, 2020, MusclePharm filed a Form
21 10-K that restated its financial statements for year-end 2017 and the first three
22 quarters of 2018 (the "Restatement Period") and included the overdue financial
23 statements for 2018 and 2019.

24 24. The restatement disclosed that, during the Restatement Period,
25 MusclePharm inflated its previously reported quarterly revenues by 9 to 25 percent
26 and materially misstated various other aspects of its financial statements.

27 25. MusclePharm disclosed in its August 25, 2020 Form 10-Q that its
28 management concluded that MusclePharm had numerous material weaknesses in its

1 internal control over financial reporting and that its disclosure controls and
2 procedures were not effective.

3 26. Drexler signed and certified MusclePharm's August 25, 2020 Form 10-
4 K as MusclePharm's CEO, President, Chairman of the Board of Directors, and PEO.

5 27. The Form 10-K filed on August 25, 2020, included a plan to remediate
6 these material weaknesses, but MusclePharm did not correct the material weaknesses.

7 28. According to its most recent quarterly report, filed on Form 10-Q on
8 May 16, 2022, MusclePharm again disclosed material weaknesses in the design and
9 operation of virtually all aspects of its internal controls. Specifically, MusclePharm
10 disclosed that:

11 “The Company has deficiencies in the design and operation of its internal
12 controls in the financial processes related to the accounting for cash, accounts
13 receivable, accounts payable, inventory, accrued liabilities, income taxes, debt,
14 equity, revenue, costs of sales, stock-based compensation, and expenses
15 classification. In addition, the Company has insufficient controls over the
16 financial close and reporting process, including account reconciliations and
17 preparation and review of financial statements and related disclosures.”

18 29. On August 17, 2022, MusclePharm announced on Form NT 10-Q that it
19 would not be able to timely file its quarterly report for the second quarter of 2022.
20 Shortly thereafter, on August 22, 2022, MusclePharm announced in a Form 8-K,
21 signed by Drexler, that its financial statements for the year ended December 31, 2021,
22 and quarter ended March 31, 2022, should no longer be relied upon because they
23 reflected errors resulting in material overstatements to reported revenues.

24 30. MusclePharm still has not completed the work necessary to restate its
25 2021 and first quarter 2022 financial statements.

26 **II. DREXLER FAILED TO ENSURE THAT MUSCLEPHARM**
27 **MAINTAINED APPROPRIATE ICFR AND DCP.**

28 31. Exchange Act Rule 13a-15(a) requires issuers like MusclePharm to

1 maintain ICFR and DCP.

2 32. ICFR is defined in Exchange Act Rule 13a-15(f) in part as “a process
3 designed by, or under the supervision of, the issuer’s principal executive and
4 principal financial officers, ... to provide reasonable assurance regarding the
5 reliability of financial reporting and preparation of financial statements for external
6 purposes in accordance with generally accepted accounting principles”

7 33. DCP are defined in Exchange Act Rule 13a-15(e) in part as “controls
8 and other procedures of an issuer that are designed to ensure that information
9 required to be disclosed by the issuer ... is recorded, processed, summarized, and
10 reported, within the time periods specified in the [SEC’s] rules and forms.”

11 34. ICFR and DCP are the responsibility of a company’s PEO and PFO.
12 Throughout the Restatement Period, Drexler was MusclePharm’s PEO and PFO. In
13 those roles, Drexler was responsible for ensuring that MusclePharm maintained
14 appropriate ICFR and DCP.

15 35. Drexler confirmed this responsibility in each and every quarterly and
16 annual report on Forms 10-Q and 10-K he signed on behalf of MusclePharm during
17 the Restatement Period. The quarterly and annual reports Drexler signed on behalf of
18 MusclePharm during the Restatement Period are comprised of MusclePharm’s 2017
19 Form 10-K filed on April 2, 2018; first quarter 2018 Form 10-Q filed on May 15,
20 2018; second quarter 2018 Form 10-Q filed on August 14, 2018; and third quarter
21 2018 Form 10-Q filed on November 14, 2018.

22 36. Each one of those filings included a SOX 302 certification, signed by
23 Drexler as MusclePharm’s PEO and PFO, which stated that Drexler:

- 24 a. was “responsible for establishing and maintaining disclosure
25 controls and procedures (as defined in Exchange Act Rules 13a-
26 15(e) ...) and internal control over financial reporting (as defined
27 in Exchange Act Rules 13a-15(f) ...) for [MusclePharm]”;
- 28 b. “[d]esigned such disclosure controls and procedures, or caused

1 such disclosure controls and procedures to be designed under [his]
2 supervision”; and

- 3 c. “[d]esigned such internal control over financial reporting, or
4 caused such internal control over financial reporting to be
5 designed under [his] supervision.”

6 37. Drexler similarly confirmed his responsibilities for ensuring that
7 MusclePharm maintain ICFR in letters to MusclePharm’s external auditor that he
8 signed (“Management Representation Letters”). For example:

- 9 a. on April 2, 2018, Drexler signed a Management Representation
10 Letter in connection with the audit for the year ended December
11 31, 2017, that asserted that Drexler was “responsible for the fair
12 presentation in the financial statements of financial position,
13 results of operations, and cash flows in conformity with
14 accounting principles generally accepted in the United States” and
15 for “adopting sound accounting policies, establishing and
16 maintaining internal control, and preventing and detecting fraud”;
17 b. on May 15, 2018 and August 14, 2018, Drexler signed
18 Management Representation Letters in connection with the
19 reviews of MusclePharm’s financial statements for the quarters
20 ended March 31, 2018 and June 30, 2018 that asserted that
21 Drexler was “responsible for the fair presentation of the financial
22 statements in conformity with accounting principles generally
23 accepted in the United States of America” and “for establishing
24 and maintaining effective internal control over financial
25 reporting”; and
26 c. on November 13, 2018, Drexler signed a Management
27 Representation Letter in connection with the review of
28 MusclePharm’s financial statements as of September 30, 2018 that

1 asserted that he was “responsible for the fair presentation ... of
 2 financial position, results of operations, and cash flows in
 3 conformity with accounting principles generally accepted in the
 4 United States of America” and “for the design and implementation
 5 of programs and controls to prevent and detect fraud.”

6 38. Despite the assertions made in each of the SOX 302 certifications and
 7 Management Representation Letters, Drexler failed to ensure that MusclePharm
 8 maintained appropriate ICFR and DCP. Indeed, Drexler never read MusclePharm’s
 9 ICFR and was not aware of whether MusclePharm had any documented DCP at all.

10 39. Further, when the company’s external auditor resigned in May 2019, it
 11 noted that during the 2018 fiscal year “the internal controls necessary for the
 12 Company to develop reliable financial statements do not exist.”

13 **III. DREXLER MADE MATERIALLY FALSE AND MISLEADING**
 14 **STATEMENTS REGARDING HIS EVALUATION OF ICFR AND DCP**
 15 **DURING THE RESTATEMENT PERIOD.**

16 40. Drexler was MusclePharm’s PEO and PFO when he signed each of
 17 MusclePharm’s quarterly reports on Form 10-Q and its annual report on Form 10-K,
 18 as well as SOX 302 certifications for each filing, during the Restatement Period.

19 41. With respect to ICFR, in each and every SOX 302 certification that
 20 Drexler signed as MusclePharm’s PEO and PFO during the Restatement Period, he
 21 affirmed that he “disclosed, *based on [his] most recent evaluation of internal control*
 22 *over financial reporting*” all significant deficiencies, material weaknesses, and fraud.
 23 (Emphasis added).

24 42. With respect to DCP, in each and every annual and quarterly report that
 25 Drexler signed as MusclePharm’s PEO and PFO during the Restatement Period, he
 26 also affirmed that he “evaluated the effectiveness of [MusclePharm’s] disclosure
 27 controls and procedures (as defined in Rules 13a-15(e) ...), as of the end of the
 28 period” and “[b]ased on such evaluation, [he] has concluded that ... [MusclePharm’s]

1 disclosure controls and procedures are designed at a reasonable assurance level and
2 are effective to provide reasonable assurance that information [the company is]
3 required to disclose in reports that [it] file[s] or submit[s] under the Exchange Act is
4 recorded, processed, summarized, and reported within the time periods specified in
5 the rules and forms of the [SEC], and that such information is accumulated and
6 communicated to [MusclePharm's] management, including [Drexler], as appropriate,
7 to allow timely decisions regarding required disclosure.”

8 43. Additionally, in each and every SOX 302 certification that Drexler
9 signed as MusclePharm's PEO and PFO during the Restatement Period, he affirmed
10 that he “[e]valuated the effectiveness of [MusclePharm's] disclosure controls and
11 procedures.”

12 44. A reasonable investor would have understood from these statements that
13 Drexler had evaluated MusclePharm's ICFR and DCP for each reporting period
14 during the Restatement Period, that any significant deficiencies or material
15 weaknesses in ICFR based on his evaluation were identified, and that Drexler had
16 concluded that DCP was designed and effective at a reasonable assurance level based
17 on his evaluation.

18 45. In reality, Drexler did not perform an evaluation of MusclePharm's
19 ICFR or DCP during the Restatement Period. Moreover, no one under his direction
20 performed an evaluation of MusclePharm's ICFR or DCP. MusclePharm did not have
21 a sub-certification process in place for testing ICFR and Drexler did not see results
22 from any assessment of ICFR. Moreover, Drexler was unaware of whether
23 MusclePharm had any documented DCP.

24 46. Each of the above statements regarding Drexler's evaluation of
25 MusclePharm's ICFR and DCP was false when made, and Drexler knew or was
26 reckless in not knowing, and should have known, that his statements regarding his
27 evaluation of MusclePharm's ICFR and DCP were false and misleading. Drexler,
28 when making statements regarding his evaluation of ICFR and DCP, knew that he

1 had not performed an evaluation of MusclePharm's ICFR or DCP during the
 2 Restatement Period, and had not seen results of any other assessment of ICFR or
 3 DCP.

4 47. The above misrepresentations regarding Drexler's evaluation of
 5 MusclePharm's ICFR and DCP were material because, among other things, investors
 6 and potential investors would consider Drexler's statements regarding his evaluation
 7 of MusclePharm's ICFR and DCP important when assessing whether MusclePharm's
 8 reported financial results were accurate.

9 **IV. DREXLER OBTAINED MONEY FOR MUSCLEPHARM BY
 10 MEANS OF THESE FALSE AND MISLEADING STATEMENTS.**

11 48. Drexler obtained money for MusclePharm by means of the
 12 misstatements regarding his evaluation of MusclePharm's ICFR and DCP because,
 13 from at least June 2018 to May 2019, through private placements, MusclePharm sold
 14 (i) restricted stock to board members to pay for board fees, (ii) common stock to
 15 plaintiffs engaged in civil litigation with the company to pay for litigation
 16 settlements, and (iii) common stock to vendors to pay for invoices. As the CEO and
 17 Chairman of the Board of Directors, Drexler voted to approve these private
 18 placement sales and was involved in implementing the sales by, for example, signing
 19 letters to the stock transfer services company directing them to issue the shares and
 20 send stock certificates to the applicable parties.

21 **V. DREXLER'S FAILURE TO ENSURE THAT MUSCLEPHARM
 22 MAINTAINED ICFR LED TO MATERIALLY FALSE FINANCIAL
 23 STATEMENTS.**

24 49. In the Form 10-K filed on August 25, 2020, MusclePharm restated its
 25 financial statements for the Restatement Period. The restatement disclosed that,
 26 during the Restatement Period, MusclePharm inflated its previously reported
 27 quarterly revenues by 9 to 25 percent, overstated its gross margins by 22 to 49
 28 percent, understated its customer credits by 23 to 38 percent, understated its inventory

1 by 23 to 34 percent, and overstated its advertising and promotional expenses by 284
 2 to 594 percent.

3 50. These errors were caused, in part, by Drexler's failure to implement and
 4 maintain ICFR for MusclePharm and the resulting material weaknesses in
 5 MusclePharm's internal controls.

6 51. MusclePharm disclosed in its August 25, 2020 Form 10-K that its
 7 management concluded that eleven "material weaknesses" existed throughout the
 8 Restatement Period. The filing states that a material weakness is "a deficiency, or a
 9 combination of deficiencies, in internal control over financial reporting, such that
 10 there is a reasonable possibility that a material misstatement of ... annual or interim
 11 financial statements will not be prevented or detected on a timely basis." The material
 12 weaknesses identified by MusclePharm's management included:

- 13 a. "Pressure to achieve sales targets gave rise to the premature and/or
 inappropriate recognition of revenues, typically occurring at or
 near the end of financial reporting periods";
- 14 b. "The Company's internal controls failed and/or were not adequate
 to ensure that there was effective testing of period end sales
 cutoff, including a proper review and comparison of invoice dates
 and related proof of delivery";
- 15 c. "Inadequate segregation of duties, allowing for an improper
 alignment of sales and operations under common leadership";
- 16 d. "Management did not maintain an effective control environment,
 including ensuring that required accounting methodologies,
 policies, and technical accounting personnel were in place. This
 control deficiency led to a series of corrections related to the years
 2018 and 2017 and resulted in a restatement to the respective
 previously issued financial statements";
- 17 e. "The Company did not properly classify payments to customers,

1 primarily for promotional activity, as a reduction in the transaction
2 price with its customers, instead treating such payments as an
3 advertising and promotions activity, a component of operating
4 expense”;

- 5 f. “The Company reported certain sales transactions prior to transfer
6 of control of goods, inconsistent with customer sales agreements
7 and the Company’s customary practices”;
8 g. “The Company did not properly estimate the expected value of
9 customer payments, in the form of credits, at each quarter period
10 end in 2018. In addition, the Company understated its accrual for
11 customers credits for the year ended December 31, 2017”; and
12 h. “The Company lacks the proper internal control documentation
13 and testing, and therefore internal controls were not consistently
14 performed.”

15 52. Drexler signed and certified MusclePharm’s August 25, 2020 Form 10-
16 K as MusclePharm’s CEO, President, Chairman of the Board of Directors, and PEO.

17 **VI. DREXLER MADE MATERIALLY MISLEADING STATEMENTS
ABOUT MUSCLEPHARM’S DEBT.**

19 53. In October 2021 and June 2022, MusclePharm raised over \$10 million
20 from a group of institutional investors (the “Noteholders”) through the sale of notes
21 and warrants (the “Notes”).

22 54. In August and September 2022, the Noteholders sent letters to the
23 company reserving their rights under the Notes because MusclePharm engaged in
24 conduct that caused two events of default. Specifically, the Noteholders stated that
25 MusclePharm had: (i) provided materially untrue or incorrect financial statements as
26 evidenced by the company’s August 22, 2022 announcement that its 2021 and first
27 quarter 2022 financial statements should no longer be relied upon; and (ii) not
28 replaced the resigning CFO with a new CFO who was not objectionable to the

1 Noteholders.

2 55. Drexler signed a MusclePharm Form 8-K dated September 19, 2022,
 3 disclosing the receipt of these letters, but also assuring investors that “the
 4 Noteholders have not accelerated payment of the outstanding balances under the
 5 Notes and have not informed the Company that the Noteholders intend to accelerate
 6 payment of the outstanding balances under the Notes.”

7 56. A reasonable investor would have understood from this disclosure that
 8 MusclePharm’s debt under the Notes had not been accelerated.

9 57. The Form 8-K omitted the fact that the Notes included a “right o[f]
 10 automatic acceleration,” which provided that “the Holder need not provide, and the
 11 Company hereby waives, any presentment, demand, protest or other notice [of
 12 acceleration] of any kind.” As such, MusclePharm’s debt was automatically
 13 accelerated at the time the event of default occurred, which had an immediate impact
 14 on the company’s liquidity and triggered its obligation to disclose an acceleration of
 15 direct financial obligations under Item 2.04 of Form 8-K.

16 58. The September 19, 2022 Form 8-K was misleading because it indicated
 17 that the company would not suffer any meaningful negative repercussions as a result
 18 of the events of default unless and until it received a payment demand from the
 19 Noteholders. In fact, the event of default had an immediate negative impact on
 20 MusclePharm’s liquidity.

21 59. Drexler’s misleading statement about the acceleration of the company’s
 22 debt was material to reasonable investors because the status of the debt was central to
 23 the company’s ability to continue normal business operations and maintain control
 24 over its assets.

25 60. On September 22, 2022, just three days after MusclePharm filed the
 26 Form 8-K, the Noteholders sent a payment demand letter to Drexler stating that the
 27 outstanding balances under the Notes were “immediately due and payable” and that
 28 “the Notes have been accruing, and will continue to accrue, Default Interest.”

1 61. Thereafter, the Noteholders exercised their rights under the Notes to
 2 secure payment of the debt by sweeping the company's bank accounts in
 3 approximately October 2022, causing MusclePharm to cease all normal business
 4 operations, and placing the company's assets up for auction in approximately
 5 November 2022, forcing MusclePharm to seek bankruptcy protection to halt the asset
 6 sale.

7 62. Drexler knew or was reckless in not knowing, and should have known,
 8 that his statement regarding the acceleration of the company's debt was misleading.
 9 The September 19, 2022 Form 8-K included direct quotes from the acceleration
 10 provision of the Notes but omitted language from the very same paragraph describing
 11 the right of automatic acceleration. This selective citation to the acceleration
 12 provision shows that Drexler knew or was reckless in not knowing, and should have
 13 known, that the Notes automatically accelerated without notice. Drexler also knew or
 14 was reckless in not knowing, and should have known, that acceleration of the Notes
 15 would cause immediate and devastating consequences for the company. And, in fact,
 16 these consequences came to light just three days later when the Noteholders sent a
 17 payment demand, which ultimately resulted in the Noteholders sweeping the
 18 company's bank accounts and placing its assets up for auction in an effort to secure
 19 payment of the Notes.

20 **VII. DREXLER ENGAGED IN FRAUDULENT OR DECEITFUL
 21 CONDUCT.**

22 63. As detailed above, Drexler engaged in deceptive conduct regarding the
 23 evaluation of MusclePharm's ICFR and DCP, as well as the status of the company's
 24 debt. Among other things, Drexler:

- 25 a. did not evaluate the effectiveness of the company's ICFR and
 26 DCP, despite the requirements to do so in Exchange Act Rules
 27 13a-15(b) and (c);
- 28 b. signed SOX 302 certifications during the Restatement Period

1 attesting to the fact that he evaluated MusclePharm's ICFR and
2 DCP when he had not performed any evaluation of the company's
3 ICFR or DCP;

- 4 c. signed each annual and quarterly report during the Restatement
5 Period attesting to the fact that he evaluated MusclePharm's DCP
6 and concluded that they were effective when he had not performed
7 any evaluation of the DCP; and
8 d. withheld information from investors about the Notes' right of
9 automatic acceleration and the immediate and catastrophic impact
10 it would have on the company and its investors.

11 64. Drexler knew or was reckless in not knowing, and should have known,
12 of his deceptive conduct. Drexler knew or was reckless in not knowing, and should
13 have known, that he had not performed an evaluation of MusclePharm's ICFR or
14 DCP. And Drexler knew or was reckless in not knowing, and should have known,
15 that the Notes automatically accelerated without notice and that acceleration of the
16 Notes would cause immediate and devastating consequences for the company.

17 **VIII. DREXLER AIDED AND ABETTED MUSCLEPHARM'S FRAUD.**

18 65. MusclePharm, through Drexler, engaged in deceptive conduct and made
19 material false and misleading statements by failing to properly evaluate its ICFR and
20 DCP during the Restatement Period and making material misstatements about those
21 evaluations in its Form 10-K and Forms 10-Q. MusclePharm also engaged in
22 deceptive conduct and made material misleading statements by withholding
23 information from investors regarding the acceleration of the company's debt and
24 making misleading statements about the status of the company's debt in its
25 September 19, 2022 Form 8-K.

26 66. MusclePharm, through Drexler, knew or was reckless in not knowing,
27 and should have known, that its conduct was deceptive and that its statements were
28 false and misleading.

1 67. For the reasons detailed above, Drexler knowingly or recklessly
 2 substantially assisted MusclePharm's deceptive conduct and misstatements. Among
 3 other things, Drexler (i) acting as MusclePharm's PEO and PFO, did not evaluate the
 4 effectiveness of the company's ICFR and DCP, (ii) signed SEC filings on behalf of
 5 MusclePharm that contained material misstatements regarding his evaluations of
 6 MusclePharm's ICFR and DCP, (iii) withheld information from MusclePharm
 7 investors regarding the acceleration of MusclePharm's debt, and (iv) signed the
 8 September 19, 2022 Form 8-K on behalf of MusclePharm that contained material
 9 misleading statements regarding the status of MusclePharm's debt.

10 **IX. DREXLER'S FAILURE TO ENSURE THAT MUSCLEPHARM**
 11 **MAINTAINED DCP LED TO UNDERREPORTED PERQUISITES AND**
 12 **VIOLATIONS OF THE PROXY SOLICITATION PROVISIONS OF**
 13 **THE FEDERAL SECURITIES LAWS.**

14 68. Accurate disclosure of executive perquisites was the primary focus of
 15 the 2015 SEC Order. Pursuant to the 2015 SEC Order, MusclePharm engaged an
 16 independent compliance consultant ("ICC") to, among other things, strengthen the
 17 disclosure controls and procedures relevant to accurate disclosure of perquisite
 18 compensation.

19 69. In February 2017, the company certified to the SEC that it had complied
 20 with the undertakings in the 2015 SEC Order, in part, by implementing a disclosure
 21 control recommended by the ICC to use an "[a]nnual questionnaire[] ... provided to
 22 the members of the Board of Directors and executives to identify any perquisites."
 23 ("D&O questionnaire").

24 70. MusclePharm used a D&O questionnaire in early 2017 to identify 2016
 25 perquisites. But, the very next year, after Drexler took over the PFO and PAO roles in
 26 the third quarter of 2017, neither he nor anyone else at the company used a D&O
 27 questionnaire, or any other controls, to identify 2017 perquisites for its named
 28 executive officers: Drexler and the Executive Vice President of Sales.

1 71. MusclePharm's Travel and Expense Policy outlined the procedures for
2 obtaining reimbursement for business expenses, including specifically identifying the
3 business purpose of the expense and submitting original receipts.

4 72. During 2017, Drexler disregarded these procedures by seeking
5 reimbursement for expenses that were not supported by any business purpose or
6 appropriate documentation.

7 73. Drexler obtained reimbursement for significant commuting expenses and
8 other expenses not integrally and directly related to his job that should have been
9 classified as perquisites.

10 74. Based on this conduct, Drexler received undisclosed perquisites in 2017
11 comprised of approximately \$129,200 in personal legal fees, \$66,200 of tax gross-ups
12 on restricted stock, \$22,800 in commuting and living expenses, \$8,300 in furniture
13 expenses, and \$4,500 of other personal expenses.

14 75. As a result of the conduct described above, MusclePharm materially
15 underreported executive perquisites in its 2017 Form 10-K, which was signed by
16 Drexler, by approximately \$231,000 (88 percent) for Drexler and approximately
17 \$107,900 (54 percent) for the Executive Vice President of Sales.

18 76. MusclePharm filed a definitive proxy statement on October 26, 2018,
19 that it used to solicit proxies in connection with, among other things, the re-election
20 of Drexler to the board of directors and an advisory vote on the executive
21 compensation packages for Drexler and other executive officers.

22 77. Drexler, as a director of the company, participated in the solicitation.

23 78. Section 14(a) of the Exchange Act makes it unlawful to solicit any proxy
24 with respect to any security (other than an exempted security) registered pursuant to
25 Section 12 of the Exchange Act in contravention of such rules and regulations as the
26 SEC may prescribe. Rule 14a-3 provides that no solicitation of a proxy may occur
27 unless each person solicited is concurrently furnished or has previously been
28 furnished with a proxy statement containing the information specified by Schedule

1 14A, including executive compensation. Rule 14a-9 prohibits the use of proxy
2 statements containing statements that are materially false or misleading by omission.

3 79. The proxy statement reported the same executive perquisites as those
4 reported in MusclePharm's 2017 Form 10-K executive compensation disclosures. As
5 a result of Drexler's conduct in connection with the disclosures described above,
6 MusclePharm materially underreported executive perquisites in the October 26, 2018
7 proxy statement by approximately \$231,000 (88 percent) for Drexler and
8 approximately \$107,900 (54 percent) for the Executive Vice President of Sales.

9 80. Accurate and transparent executive compensation disclosures are
10 material because the amounts that executives are paid, as well as the amounts
11 executives are paid as perquisites, are important to an investor's assessment of a
12 company's likely future profitability and the alignment of management's interests
13 with the interests of shareholders.

14 81. Drexler should have known that the perquisite disclosures in the proxy
15 statement were materially misstated because, among other reasons, he had knowledge
16 of the unreported perquisites he received and he failed to exercise reasonable care
17 with respect to DCP involving executive compensation.

18 **X. DREXLER DIRECTED MUSCLEPHARM NOT TO FILE REQUIRED
19 CURRENT REPORTS ON FORM 8-K REGARDING
20 MUSCLEPHARM'S PAO.**

21 82. MusclePharm experienced exceptional, undisclosed turnover in the PAO
22 position in the third quarter of 2017. In fact, in just a single quarter, three different
23 people held the position of PAO at MusclePharm. In July 2017, the interim
24 CFO/PAO resigned and was replaced by a new CFO/PAO in August 2017, but he
25 resigned the following month. Whereupon Drexler was appointed as the interim PAO
26 in September 2017.

27 83. Issuers are required to disclose all changes to the PAO position on Item
28 5.02 of Form 8-K within four business days of the event.

1 84. None of the third quarter 2017 changes were timely disclosed.

2 85. In August and September 2017, Drexler received and reviewed draft
3 Forms 8-K related to one PAO's resignation, but he instructed the company's
4 controller not to file the disclosure.

5 86. Instead, MusclePharm waited until November 14, 2017, to file a Form 8-
6 K, which Drexler signed, that belatedly disclosed all the changes that occurred in the
7 PAO position in the prior quarter.

8 **XI. DREXLER FAILED TO REIMBURSE MUSCLEPHARM FOR
9 BONUSES RECEIVED IN THE 12 MONTHS FOLLOWING
10 MISSTATED REPORTS.**

11 87. SOX Section 304(a) requires the CEO and CFO of any issuer required to
12 prepare an accounting restatement due to material non-compliance with financial
13 reporting requirements under the securities laws as a result of misconduct to
14 reimburse the issuer for (i) any bonus or other incentive or equity based
15 compensation received by that person from the issuer during the twelve-month period
16 following the first public issuance or filing with the SEC of the misstated document,
17 and (ii) any profits realized from the sale of securities of the issuer during that
18 twelve-month period.

19 88. MusclePharm was required to restate its financial statements contained
20 in its Form 10-K for the year ended December 31, 2017, and its Forms 10-Q for the
21 quarters ended March 31, 2018, June 30, 2018, and September 30, 2018, because, as
22 a result of misconduct, its financial statements did not comport with GAAP.

23 89. MusclePharm's restatements for those periods were disclosed in its Form
24 10-K filed with the SEC on August 25, 2020.

25 90. Drexler received bonuses in the 12-month period following the first
26 public issuance or filing with the SEC of the misstated Form 10-K for the year ended
27 December 31, 2017, and one or more of the misstated Forms 10-Q, including a
28 \$100,000 cash bonus paid on May 31, 2018, and a \$250,000 cash bonus paid on

1 August 15, 2018.

2 91. Drexler has not reimbursed any bonus amount to MusclePharm.

3 **XII. DREXLER VIOLATED, OR AIDED AND ABETTED**
4 **MUSCLEPHARM'S VIOLATIONS OF, REPORTING,**
5 **CERTIFICATION, REPORTING CONTROLS, AND INTERNAL**
6 **CONTROLS PROVISIONS OF THE FEDERAL SECURITIES LAWS.**

7 **A. Drexler Aided and Abetted MusclePharm's Violation of Reporting**
8 **Provisions of the Federal Securities Laws.**

9 92. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13
10 thereunder require issuers like MusclePharm to file reports with the SEC containing
11 such information as the SEC's rules prescribe. Further, Exchange Act Rule 12b-20
12 requires that an issuer's statement or report contain such further material information
13 as may be necessary to make the required statements, in light of the circumstances
14 under which they were made, not misleading.

15 93. As detailed above, MusclePharm violated these reporting provisions by
16 (i) filing annual and quarterly reports with the SEC that misstated Drexler's
17 evaluation of the company's ICFR and DCP, (ii) filing a current report on September
18 19, 2022, that contained misleading statements about the Notes acceleration as
19 described above, and (iii) failing to file required current reports regarding PAO
20 turnover.

21 94. Also as detailed above, Drexler aided and abetted these violations by
22 knowingly or recklessly providing substantial assistance to MusclePharm's
23 violations. Among other things, Drexler (i) signed and certified each of the annual
24 and quarterly reports that included false and misleading information about his own
25 conduct, (ii) signed the misleading September 19, 2022 current report on Form 8-K,
26 and (iii) directed the company not to timely file a current report regarding the
27 departure of one of the PAOs in third quarter 2017.

1 **B. Drexler Violated the Certification Provision of the Federal
2 Securities Laws.**

3 95. Rule 13a-14 of the Exchange Act requires, in pertinent part, that each
4 annual and quarterly report include certifications signed by the issuer's PEO and PFO
5 which include representations that (i) based on the certifier's knowledge, the report
6 does not contain any untrue statement of a material fact or omit to state a material fact
7 necessary to make the statements made, in light of the circumstances under which
8 such statements were made, not misleading with respect to the period covered by the
9 report and (ii) the certifier designed and evaluated the effectiveness of the registrant's
10 ICFR and DCP.

11 96. Drexler violated Rule 13a-14 by certifying MusclePharm's annual and
12 quarterly reports during the Restatement Period because (i) he signed the certification
13 without a sufficient basis to believe the certifications were accurate and (ii) he knew
14 that the reports included material misstatements or omissions regarding his design
15 and evaluation of ICFR and DCP.

16 **C. Drexler Violated and Aided and Abetted MusclePharm's Violations
17 of the Reporting Controls Provision of the Federal Securities Laws.**

18 97. Rule 13a-15(a) of the Exchange Act requires issuers like MusclePharm
19 to maintain DCP and ICFR.

20 98. MusclePharm violated Rule 13a-15(a) by failing to maintain DCP or
21 ICFR as required. Specifically, MusclePharm failed to implement DCP concerning
22 the identification and reporting of executive perquisites, and failed to maintain
23 appropriate ICFR to prevent and detect accounting errors during the Restatement
24 Period.

25 99. Drexler knowingly or recklessly substantially assisted MusclePharm's
26 violation of Rule 13a-15(a). For example, although the company certified to the SEC
27 staff in February 2017 that it implemented a D&O questionnaire disclosure control,
28 Drexler failed to use D&O questionnaires, or any other controls, to identify 2017

1 perquisites that he and the Executive Vice President of sales received. Additionally,
2 as set forth above, Drexler failed to ensure that MusclePharm maintained appropriate
3 ICFR and DCP.

4 100. Drexler additionally violated Rules 13a-15(b) and 13a-15(c) of the
5 Exchange Act by failing to evaluate the company's ICFR and DCP, as required by
6 those provisions.

7 **D. Drexler Aided and Abetted MusclePharm's Violation of the Internal
8 Controls Provision of the Federal Securities Laws.**

9 101. Section 13(b)(2)(B) of the Exchange Act requires issuers like
10 MusclePharm to devise and maintain a system of sufficient internal accounting
11 controls.

12 102. In violation of Section 13(b)(2)(B), MusclePharm failed to maintain a
13 system of internal accounting controls sufficient to provide reasonable assurance that
14 revenue, customer credits, gross profit margin, advertising and promotional expenses,
15 and inventory complied with GAAP.

16 103. In his role as PEO, PFO, and PAO, Drexler was responsible for devising
17 and maintaining MusclePharm's system of internal accounting controls and, by
18 failing to do so, Drexler knowingly or recklessly substantially assisted
19 MusclePharm's violation of Section 13(b)(2)(B) of the Exchange Act.

20 **FIRST CLAIM FOR RELIEF**

21 **Fraud: Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

22 104. The SEC realleges and incorporates by reference paragraphs 1 through
23 103 as though fully set forth herein.

24 105. Drexler, directly or indirectly, acting with scienter, by use of the means
25 or instrumentalities of interstate commerce, or of the mails, or of a facility of a
26 national securities exchange, in connection with the purchase or sale of a security
27 (i) employed devices, schemes, or artifices to defraud, (ii) made untrue statements of
28 material fact or omitted to state a material fact necessary in light of the circumstances

1 under which they were made, not misleading, and (iii) engaged in acts, practices, or
2 courses of business which operated or would operate as a fraud or deceit upon
3 another person.

4 106. By virtue of the foregoing, Drexler, directly or indirectly, violated and,
5 unless restrained and enjoined, will again violate Section 10(b) of the Exchange Act
6 [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

7 **SECOND CLAIM FOR RELIEF**

8 **Fraud: Aiding and Abetting MusclePharm's Violations of**
9 **Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
10 **(Alternatively)**

11 107. The SEC realleges and incorporates by reference paragraphs 1 through
12 103 as though fully set forth herein.

13 108. MusclePharm, directly or indirectly, acting with scienter, by use of the
14 means or instrumentalities of interstate commerce, or of the mails, or of a facility of a
15 national securities exchange, in connection with the purchase or sale of a security
16 (i) employed devices, schemes, or artifices to defraud, (ii) made untrue statements of
17 material fact or omitted to state a material fact necessary in light of the circumstances
18 under which they were made, not misleading, and (iii) engaged in acts, practices, or
19 courses of business which operated or would operate as a fraud or deceit upon
20 another person.

21 109. As a result of the conduct alleged herein, Drexler aided and abetted
22 MusclePharm's violations of Section 10(b) of the Exchange Act and Rule 10b-5 by
23 knowingly or recklessly providing substantial assistance to MusclePharm.

24 110. By reason of the foregoing, Drexler, directly or indirectly, aided and
25 abetted and, unless restrained and enjoined, will again aid and abet violations of
26 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §
27 240.10b-5] thereunder.

1 **THIRD CLAIM FOR RELIEF**

2 **Fraud: Section 17(a) of the Securities Act**

3 111. The SEC realleges and incorporates by reference paragraphs 1 through
4 103 as though fully set forth herein.

5 112. Drexler, directly or indirectly, directly or indirectly, in the offer or sale
6 of securities, by use of the means or instruments of transportation or communication
7 in interstate commerce or by use of the mails, acting with the requisite state of mind
8 (i) employed devices, schemes, or artifices to defraud, (ii) obtained money or
9 property by means of untrue statements of material fact or omissions of material fact
10 necessary to make the statements made, in light of the circumstances under which
11 they were made, not misleading, and (iii) engaged in transactions, practices, or a
12 course of business which operated or would operate as a fraud or deceit upon the
13 purchaser.

14 113. By virtue of the foregoing, Drexler, directly or indirectly, violated and,
15 unless restrained and enjoined, will again violate Section 17(a) of the Securities Act
16 [15 U.S.C. § 77q(a)].

17 **FOURTH CLAIM FOR RELIEF**

18 **Fraud: Aiding and Abetting MusclePharm's Violations of**

19 **Section 17(a) of the Securities Act**

20 **(Alternatively)**

21 114. The SEC realleges and incorporates by reference paragraphs 1 through
22 103 as though fully set forth herein.

23 115. MusclePharm, directly or indirectly, in the offer or sale of securities, by
24 use of the means or instruments of transportation or communication in interstate
25 commerce or by use of the mails, acting with the requisite state of mind (i) employed
26 devices, schemes, or artifices to defraud, (ii) obtained money or property by means of
27 untrue statements of material fact or omissions of material fact necessary to make the
28 statements made, in light of the circumstances under which they were made, not

misleading, and (iii) engaged in transactions, practices, or a course of business which operated or would operate as a fraud or deceit upon the purchaser.

3 116. As a result of the conduct alleged herein, Drexler aided and abetted
4 MusclePharm's violations of Section 17(a) of the Securities Act by knowingly or
5 recklessly providing substantial assistance to MusclePharm.

6 117. By reason of the foregoing, Drexler, directly or indirectly, aided and
7 abetted and, unless restrained and enjoined, will again aid and abet violations of
8 Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

FIFTH CLAIM FOR RELIEF

**False SEC Filings: Aiding and Abetting MusclePharm's Violation of
Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and
13a-13 Thereunder**

3 118. The SEC realleges and incorporates by reference paragraphs 1 through
4 103 as though fully set forth herein.

5 119. MusclePharm, which is an issuer of securities registered pursuant to
6 Section 12 of the Exchange Act, filed materially false and misleading annual,
7 quarterly, and current reports with the SEC that made untrue statements of material
8 fact or omitted to state material facts necessary in order to make the statements made,
9 in light of the circumstances under which they were made, not misleading in violation
10 of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13
11 thereunder.

22 120. As a result of the conduct alleged herein, Drexler aided and abetted
23 MusclePharm's violations of Section 13(a) of the Exchange Act and Rules 12b-20,
24 13a-1, 13a-11, and 13a-13 thereunder by knowingly or recklessly providing
25 substantial assistance to MusclePharm.

26 121. By reason of the foregoing, Drexler, directly or indirectly, aided and
27 abetted and, unless restrained and enjoined, will again aid and abet violations of
28 Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1,

1 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and
2 240.13a-13].

3 **SIXTH CLAIM FOR RELIEF**

4 **False Certifications: Exchange Act Rule 13a-14**

5 122. The SEC realleges and incorporates by reference paragraphs 1 through
6 103 as though fully set forth herein.

7 123. As a result of the conduct alleged herein, Drexler falsely certified that
8 MusclePharm's quarterly and annual reports (i) did not contain any untrue statement
9 of a material fact or omit to state a material fact necessary to make the statements
10 made, in light of the circumstances under which such statements were made, not
11 misleading and (ii) that he designed and evaluated the effectiveness of the registrant's
12 ICFR and DCP.

13 124. By virtue of the foregoing, Drexler, directly or indirectly, violated and,
14 unless restrained and enjoined, will again violate Exchange Act Rule 13a-14 [17
15 C.F.R. § 240.13a-14].

16 **SEVENTH CLAIM FOR RELIEF**

17 **Reporting Controls: Aiding and Abetting MusclePharm's Violations of
18 Exchange Act Rule 13a-15(a)**

19 125. The SEC realleges and incorporates by reference paragraphs 1 through
20 103 as though fully set forth herein.

21 126. MusclePharm, which is an issuer of securities pursuant to Section 12 of
22 the Exchange Act and which files annual reports with the SEC pursuant to Section
23 13(a) of the Exchange Act, failed to maintain required disclosure controls and
24 procedures and internal control over financial reporting in violation of Rule 13a-15(a)
25 of the Exchange Act.

26 127. As a result of the conduct alleged herein, Drexler aided and abetted
27 MusclePharm's violations of Rule 13a-15(a) of the Exchange Act by knowingly or
28 recklessly providing substantial assistance to MusclePharm.

128. By reason of the foregoing, Drexler, directly or indirectly, aided and abetted and, unless restrained and enjoined, will again aid and abet violations of Exchange Act Rule 13a-15(a) [17 C.F.R. § 240.13a-15(a)].

EIGHTH CLAIM FOR RELIEF

Reporting Controls: Exchange Act Rules 13a-15(b) and 13a-15(c)

129. The SEC realleges and incorporates by reference paragraphs 1 through 103 as though fully set forth herein.

130. As a result of the conduct alleged herein, Drexler, violated Rules 13a-15(b) and 13a-15(c) of the Exchange Act by failing to evaluate the effectiveness of MusclePharm's ICFR and DCP.

131. By reason of the foregoing, Drexler, directly or indirectly, violated and, unless restrained and enjoined, will again violate Rules 13a-15(b) and 13a-15(c) of the Exchange Act [17 C.F.R. §§ 240.13a-15(b) and 240.13a-15(c)].

NINTH CLAIM FOR RELIEF

Internal Accounting Controls: Aiding and Abetting MusclePharm's Violation of Section 13(b)(2)(B) of the Exchange Act

132. The SEC realleges and incorporates by reference paragraphs 1 through 103 as though fully set forth herein.

133. MusclePharm failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and any other criteria applicable to such statements in violation of Section 13(b)(2)(B) of the Exchange Act.

134. As a result of the conduct alleged herein, Drexler aided and abetted MusclePharm's violation of Section 13(b)(2)(B) of the Exchange Act by knowingly or recklessly providing substantial assistance to MusclePharm.

135. By reason of the foregoing, Drexler, directly or indirectly, aided and abetted and, unless restrained and enjoined, will again aid and abet violations of

1 Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

2 **TENTH CLAIM FOR RELIEF**

3 **Proxy Disclosures: Violation of Section 14(a) of the Exchange Act
4 and Rules 14a-3 and 14a-9 Thereunder**

5 136. The SEC realleges and incorporates by reference paragraphs 1 through
6 103 as through fully set forth herein.

7 137. As a result of the conduct alleged herein, Drexler, directly or indirectly,
8 by use of mails, or the means of instrumentalities or interstate commerce or any
9 facility of a national securities exchange, solicited proxies without furnishing each
10 person solicited a proxy statement containing the information specified by the proxy
11 rules, and used proxy statements containing statements which, at the time and in light
12 of the circumstances under which they are made, were false or misleading with
13 respect to a material fact, or omitted to state material facts necessary to make the
14 statement therein not misleading or necessary to correct any statement in any earlier
15 communication with respect to the solicitation of a proxy for the same meeting or
16 subject matter which has become false or misleading.

17 138. By reason of the foregoing, Drexler violated and, unless restrained and
18 enjoined, will again violate Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)]
19 and Rules 14a-3 and 14a-9 thereunder [17 C.F.R. §§ 240.14a-3 and 240.14a-9].

20 **ELEVENTH CLAIM FOR RELIEF**

21 **Clawback: SOX Section 304(a)**

22 139. The SEC realleges and incorporates by reference paragraphs 1 through
23 103 as through fully set forth herein.

24 140. By virtue of the foregoing, MusclePharm filed reports that were in
25 material non-compliance with its financial reporting requirements under the federal
26 securities laws from April 2, 2018, when MusclePharm's Form 10-K for year-end
27 2017 was filed until November 14, 2018, when MusclePharm's Form 10-Q for the
28 third quarter of 2018 was filed. MusclePharm's material non-compliance with its

1 financial reporting requirements resulting from misconduct that required the company
2 to prepare accounting restatements for its financial statements for 2017 and the first
3 three quarters of 2018.

4 141. Drexler received or obtained, during the statutory time periods
5 established by SOX, bonuses, incentives, and/or equity-based compensation which he
6 failed to reimburse to MusclePharm.

7 142. The SEC has not exempted Drexler, pursuant to Section 304(b) of SOX,
8 from its application under Section 304(a).

9 143. By reason of the foregoing, Drexler violated and, unless ordered to
10 comply will continue to violate, Section 304(a) of SOX [15 U.S.C. § 7243(a)].

RELIEF SOUGHT

WHEREFORE, the SEC respectfully requests that this Court:

I.

Find that Drexler committed the violations alleged in this Complaint;

II.

16 Enter an injunction, in a form consistent with Rule 65 of the Federal Rules of
17 Civil Procedure, permanently restraining and enjoining Drexler from violating,
18 directly or indirectly, the laws and rules he is alleged to have violated in this
19 Complaint;

III.

Order Drexler to pay civil money penalties pursuant to Section 20(d) of the
Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15
U.S.C. § 78u(d)(3)];

IV.

25 Order Drexler to reimburse MusclePharm as required by SOX Section 304(a)
26 [15 U.S.C. § 7243(a)].

V.

Order, pursuant to the Court's equitable powers, Section 20(e) of the Securities

1 Act [15 U.S.C. § 77t(e)], and Section 21(d)(2) of the Exchange Act [15 U.S.C. §
2 78u(d)(2)], that Drexler is prohibited, following the date of entry of the order, from
3 acting as an officer or director of any issuer that has a class of securities registered
4 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to
5 file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

6 **VI.**

7 Grant such other and further relief as this Court may deem just and proper.

8 **JURY DEMAND**

9 The SEC demands a trial by jury on all claims so triable.

10
11 Respectfully submitted, June 27, 2023.

12
13 /s/ Daniel Blau
14 Daniel Blau
15 Zachary T. Carlyle
16 Sharan E. Lieberman
17 Attorneys for Plaintiff
18 Securities and Exchange Commission
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